

BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, MAY 10, 2001

10:15 A.M.

Reported by:  
Valorie Phillips  
Contract No. 150-99-002

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William Keese, Chairman

Robert A. Laurie

Robert Pernell

Arthur Rosenfeld

James Boyd, Ex Officio

STAFF PRESENT

Steve Larson

William Chamberlain

Garret Shean

Bob Eller

Jeff Ogata

Paul Kraemer

Nancy Tronas

Amanda Behe, ALJ, OAH

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Rick R. Rothman, Attorney  
McCutchen, Doyle, Brown and Enersen, LLP

Ed Blackford  
AES Huntington Beach LLC

Mark Woodruff  
AES Southland

Mervyn A. Soares  
Texaco Power and Gasification Global, Inc.

ALSO PRESENT

Al Pac, Attorney  
Matt Lamb, Project Manager  
Debbie Cook, Mayor Pro Tem  
City of Huntington Beach

Scott A. Galati, Attorney  
John P. Grattan, Attorney  
Grattan & Galati

Gregory L. Maxim, Attorney  
Ellison, Schneider & Harris

Doug W. Wheeler  
GWF Power Systems Company, Inc.

Mark R. Wolfe, Attorney  
Adams, Broadwell, Joseph and Cardozo

Robert Winchell

Bill McCord

Rich Loy

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Items	
1 Huntington Beach Generating Station Retool Project	1,76
Executive Session	55
2 Hanford Energy Park Peaker Power Plant Project	56
3 Change of Ownership, Sunrise Power Project	68
4 Peak Demand Reduction Program	70
5 Mojave Desert Air Quality Management District	71
6 Energy Commission Committee and Oversight	70,73
7 Chief Counsel's Report	--
8 Executive Director's Report	73
9 Public Adviser's Report	74
10 Public Comment	75
Executive Session	90
Adjournment	90
Certificate of Reporter	91

1 P R O C E E D I N G S

2 10:15 a.m.

3 CHAIRMAN KEESE: I call this meeting of  
4 the Energy Commission to order. Commissioner  
5 Pernell, would you lead us in the Pledge, please.

6 (Whereupon, the Pledge of Allegiance was  
7 recited in unison.)

8 CHAIRMAN KEESE: Thank you. We took a  
9 private caucus vote and our senior member and our  
10 junior member and I declared this a tie-less day.  
11 That's two votes over here, one vote here and --

12 COMMISSIONER ROSENFELD: I think we  
13 should make it a tie-less summer.

14 CHAIRMAN KEESE: That would be all right  
15 with me. I understand we have seven people on the  
16 phone or so. I would ask that those who are on  
17 the phone here attempt to keep dogs from barking  
18 or other interference to come in. It does wind up  
19 on our speakerphones here.

20 I will also ask all people speaking  
21 today to get as close to the mike as possible,  
22 very close to the mike. And then we do get  
23 amplification here. And it works for our court  
24 reporter.

25 We're going to take up today as item

1       number one, our continuation item, the Huntington  
2       Beach Generating Station Retool Project, 00-AFC-  
3       13. Commissioner Pernel? Commissioner Rosenfeld.

4               COMMISSIONER ROSENFELD: There has been  
5       lots of last-minute discussions. I think what we  
6       need is to call on Garret Shean --

7               MS. SHAPIRO: Art, we can't hear you.

8               COMMISSIONER ROSENFELD: Oh, violated  
9       the first rule.

10              I propose that what we need is an update  
11       from Garret Shean who luckily has just walked in.

12              HEARING OFFICER SHEAN: Or maybe not.  
13       Good morning, Commissioners.

14              COMMISSIONER PERNELL: Good morning.

15              HEARING OFFICER SHEAN: I'm Garret  
16       Shean, Hearing Officer on the Huntington Beach  
17       case. I think we'll have some introductions here  
18       in a moment.

19              But I'd like to do something that I  
20       think is absolutely warranted, and which is to  
21       thank many of the Commission employees who have  
22       given extraordinary effort in getting this case  
23       from early February to this point where we're in  
24       the position to consider and possibly adopting  
25       Presiding Member's Proposed Decision.

1                   And that certainly would be Jack  
2           Caswell, who is the Project Manager; and not only  
3           did he do a good job for the staff, but he was  
4           very responsive in terms of responding to the  
5           innovative procedures that we've put into effect  
6           for the hearings and the working groups.

7                   And the working group leaders also  
8           included Bob Hausler, Cheri Davis, Eileen Allen,  
9           Keith Golden, Dale Edwards, Dick Anderson; staff  
10          counsel was Paul Kraemer here. From cartography  
11          we had Jacque Gilbreath and Terry Rose who helped  
12          us with all our graphics.

13                   From IT, Joel McAllister, Tony Woo,  
14          Sandra Lindberg for getting us our CD burner, and  
15          Dale Bosley. Bob Aldrich with Webworks. Roy  
16          Sanders from Repro. The Public Adviser's Office,  
17          Marija Krapceovich and Roberta were extremely  
18          helpful. And also our Hearing Office Staff, Gina  
19          Fontanilla, Sandy Harris, Katherine Nichols, and  
20          your Advisors, Ellie Townsend-Smith, Rosella and  
21          John Wilson.

22                   With that, let me indicate that what we  
23          have attempted to do with the revised -- or I  
24          should call it the amended PMPD, was to provide a  
25          decision that was balanced, not only for the

1 citizens of the State of California, but also for  
2 AES, the residents of Huntington Beach, and the  
3 ocean environment in the Pacific Ocean.

4 The Committee believes we have attained  
5 that balance and is offering that to you this  
6 morning. And I should say this, it is no secret  
7 that this case has been -- has followed a  
8 circuitous path that has led us here today. And  
9 even basically overnight there have been  
10 activities related to this case, and they have led  
11 us to the point where as of this morning, I  
12 believe, the applicant has a statement with  
13 respect to their view on the most significant  
14 conditions related to the sales of electricity  
15 here in California and the duration of the  
16 contract.

17 Mr. Rothman and I have been in  
18 discussions this morning and we have at least  
19 prepared a package that we'll offer the condition  
20 number 2, emergency number 2, desired by the  
21 applicant, and we also have a version that follows  
22 on a staff proposal that I think at this point the  
23 Committee basically would like to offer to its  
24 fellow Commissioners these two matters, so that we  
25 can deliberate basically the conditions that will



1       apply to a recommended ten-year certification.  
2       And how the Commission will review the applicant's  
3       compliance with the current conditions of  
4       certification and with the mitigation measures  
5       which will arise out of studies that are being  
6       conducted during the operation of the facility.

7               Most of these, the two major studies  
8       relate to surf zone bacterial pollution and the  
9       entrainment of fish and other aquatic organisms in  
10      the ocean water intake which is used for the  
11      cooling of the power plant.

12             And with that, I guess that based upon a  
13      little bit of a script, we'll go to Mr. Rothman at  
14      this point, and he has a statement from the  
15      applicant.

16             CHAIRMAN KEESE:   Mr. Rothman.

17             MR. ROTHMAN:   I'm actually Rick Rothman  
18      on behalf of AES and I'm really here just to  
19      introduce Mr. Ed Blackford, who is speaking on  
20      behalf of AES Huntington Beach 3 and 4, and will  
21      describe just a quick status report on the efforts  
22      that AES has been undertaking to enter into an  
23      agreement with the California Department of Water  
24      Resources.

25             CHAIRMAN KEESE:   Thank you.

1                   MR. BLACKFORD: Good morning, I'm  
2           Ed Blackford. I'm the Site Manager and also serve  
3           as Project Director for the 3 and 5 Retool  
4           Project.

5                   One of our main focuses, or perhaps our  
6           main focus through the continuance of this project  
7           for the past two to three weeks has been to come  
8           to an agreement with the CDWR in the forms of a  
9           contract for sale of the output of these units to  
10          California.

11                  While we have been working very  
12          diligently, it is taking longer than we thought to  
13          get our arms around this situation, even though,  
14          in fact, we had been working from a memorandum of  
15          understanding agreeable to both parties from the  
16          early part of March.

17                  However, with increased efforts on both  
18          sides we now basically have an agreement in  
19          concept which should be memorialized in the very  
20          near term.

21                  The lone problem that we have been  
22          grappling with, which is no secret, we've been  
23          open about it, is basically the credits. Anyone  
24          that has read the paper the last couple of days,  
25          seeing the turmoil with the whole bond issue,

1 knows that this is a situation in flux, and it has  
2 been very difficult for both parties to get to a  
3 comfort zone that was mutually satisfactory.

4 However, based on conversations within  
5 the last 36 hours, we feel that basically that  
6 will be finalized in the very near future.

7 Jumping from that to the other great  
8 concern which we have been consistent with all  
9 along is the certification time period that has  
10 complicated the negotiations with the CDWR.  
11 Because quite frankly when we entered into those  
12 early discussions we were not envisioning any  
13 timeframe limitation on certification.

14 We are now at the point that as we have  
15 already consistently all along, any certification  
16 of a period of five years or less just does not  
17 support this project. And we continue to  
18 reinforce those concerns.

19 CHAIRMAN KEESE: Thank you.

20 HEARING OFFICER SHEAN: All right, at  
21 this point, I guess what is appropriate --

22 CHAIRMAN KEESE: We'll hear from staff.  
23 Thank you, Mr. Blackford.

24 MR. KRAEMER: Yes, first in addition to  
25 the individuals that Mr. Shean thanked, staff

1       wants to thank the South Coast Air Quality  
2       Management District for the heroic effort they put  
3       into quickly processing the air quality  
4       determinations in this project. Specifically  
5       Moshen Nazemi, Paul Parke and Connie Yee. And  
6       without their cooperation on a very timely basis  
7       we probably couldn't be before you here today.

8               One question I have of the applicant is  
9       their position. In the past they have protested  
10      the imposition of condition number emergency 1,  
11      which requires, in essence, a DWR contract prior  
12      to the commercial operation of the project.

13             And I wanted to clarify on the record  
14      what their position was with regard to that. And  
15      if their position is that they are stipulating to  
16      the imposition of that condition, then I would  
17      further ask that they stipulate on the record that  
18      they are waiving any rights to challenge that  
19      condition at some future point in a court of law  
20      or in any other forum on any grounds, whether it  
21      be federal, state or some other law.

22             Otherwise, we are, although I've not  
23      seen the revised condition on duration yet, I  
24      believe we are in agreement with that --

25             CHAIRMAN KEESE: Let's deal with this

1 condition first, then.

2 MR. ROTHMAN: Well, if it would help, I  
3 think that they are inextricably intertwined.  
4 What you didn't hear Mr. Blackford say was that we  
5 have been consistent in our position with respect  
6 to emergency condition number 1, but that we  
7 didn't raise that as an issue today, and we are  
8 not objecting to that as a condition of  
9 certification, on the condition that the term, the  
10 duration of the certification is the ten-year time  
11 period.

12 And in terms of, you know, our non-  
13 objection, I think that we are, you know, right  
14 now I'm stating for the record that if the terms  
15 of certification are the ten-year term, we would  
16 not object to it.

17 I don't think it's appropriate for us to  
18 be waiving rights on the record, but we would not  
19 object to it, and we would not intend to challenge  
20 it.

21 COMMISSIONER LAURIE: Mr. Chairman, just  
22 for procedural purposes, a non-objection of any  
23 condition, whatever that condition may be, whether  
24 it's E-1 or any other condition, is not going to  
25 be acceptable to me.

1                   In every case what we require is  
2           concurrence or agreement with the condition. And  
3           that's the language that I want to see. So a no-  
4           objection to any condition is not something that  
5           I'd be looking for, I'd be looking for a  
6           concurrence or an acceptance of the condition.  
7           And that's the language that I will want.

8                   CHAIRMAN KEESE: Okay, with that, let me  
9           just hold this a moment. Because you placed a  
10          condition on condition number 2. I think  
11          before -- we can't engage any more on that  
12          discussion, I don't believe, until we've taken up  
13          issue number 2.

14                   So why don't we deal now with emergency  
15          number 2.

16                   HEARING OFFICER SHEAN: Mr. Chairman and  
17          Members, what we have handed out to you and is  
18          available, I think Ms. Townsend-Smith has some  
19          additional copies and I have some more, so if  
20          anyone needs them I'm happy to provide them.

21                   Essentially two drafts. One parallels a  
22          draft provided by the staff, and one is one  
23          essentially proposed by the applicant.

24                   The first, on the page marked final,  
25          that front version or the longer version, and let

1 me just describe the essential differences.

2 Both provisions for emergency-2 contain  
3 a review by the Commission of a determination of  
4 whether or not the project owner has substantially  
5 complied with conditions of certification.  
6 Further, that the project owner has implemented or  
7 is implementing, to the extent feasible, and  
8 feasible is intended with its CEQA meaning there,  
9 the mitigation measures that have been determined  
10 to be responsible for, as a result of the studies  
11 that will be undertaken after certification. And  
12 that they are current on all permits in force.

13 Those are common to both. The  
14 difference is --

15 COMMISSIONER LAURIE: Excuse me, Garret.

16 HEARING OFFICER SHEAN: Yes, sir.

17 COMMISSIONER LAURIE: Which one is  
18 applicant and which one is staff?

19 HEARING OFFICER SHEAN: The applicant is  
20 the shorter one, I guess that's the best way to  
21 describe that.

22 COMMISSIONER LAURIE: Yeah, that's what  
23 I figured, okay.

24 HEARING OFFICER SHEAN: The essential  
25 difference is that the longer one, the staff

1 version, has the review occurring basically five  
2 years out. And that if the applicant is showing  
3 both compliance with conditions and implementation  
4 of mitigation, then they be permitted the second  
5 five years.

6 The burden, therefore, would be on the  
7 applicant to demonstrate that it is in compliance  
8 and it is implementing mitigation.

9 COMMISSIONER LAURIE: But it's  
10 discretionary with the Commission, is that not  
11 right?

12 HEARING OFFICER SHEAN: That is correct.

13 COMMISSIONER LAURIE: So it's a -- under  
14 staff proposal it's a five-year permit subject to  
15 discretionary approval provided -- the language is  
16 somewhat unclear, but it suggests to me that if  
17 positive findings are made, then the Commission  
18 has to approve the extension. Is that the intent?

19 HEARING OFFICER SHEAN: Yes, sir.

20 CHAIRMAN KEESE: Mr. Larson.

21 MR. LARSON: As I understand it, this is  
22 not the staff recommendation, however. And I  
23 would like to know the differences between the  
24 staff recommendation and the Hearing Officer's  
25 recommendation.



1 HEARING OFFICER SHEAN: Yes, sir, and I  
2 should indicate that that is correct. This was  
3 drawn from the staff recommendation, and --

4 CHAIRMAN KEESE: So what we --

5 HEARING OFFICER SHEAN: -- it would be,  
6 it would be the Hearing Officer --

7 CHAIRMAN KEESE: -- what we might have  
8 in front of us is three recommendations, a staff  
9 recommendation, an applicant recommendation and  
10 the Hearing Officer recommendation?

11 HEARING OFFICER SHEAN: You may, if the  
12 staff chooses to come up with something separate.

13 MR. KRAEMER: We're Xeroxing it now.

14 HEARING OFFICER SHEAN: All right. The  
15 shorter version is the applicant's version, which  
16 is not a five and five, but it's a straight ten.  
17 And it would cause the review of the subject  
18 matters that we're talking about here, the same  
19 review. But the burden then would befall the  
20 Commission should it find that there was not  
21 compliance with the conditions, or that there was  
22 not sufficient implementation of mitigation to  
23 take some action at that point, either to revoke  
24 or otherwise limit the certification. Or to take  
25 some other step in order to assure compliance.

1                   And so those are the essential  
2 differences --

3                   COMMISSIONER PERNELL: Let me ask a  
4 question here, Mr. Chairman, if I may.

5                   CHAIRMAN KEESE: Commissioner Pernell.

6                   COMMISSIONER PERNELL: Under the shorter  
7 version we still have to review, correct?

8                   HEARING OFFICER SHEAN: That is correct.

9                   COMMISSIONER PERNELL: And what you're  
10 saying is if we review and find that they are in  
11 compliance, that's the end of it?

12                  HEARING OFFICER SHEAN: Correct.

13                  COMMISSIONER PERNELL: If we review and  
14 find that they're not, then there's some action  
15 that has to be taken?

16                  HEARING OFFICER SHEAN: Yes, in the  
17 shorter version the Commission would have to take  
18 affirmatively some action to either gain  
19 compliance or revoke the certification.

20                  COMMISSIONER PERNELL: Right. And if we  
21 go to the longer version there is a review in five  
22 years, correct?

23                  HEARING OFFICER SHEAN: Yes.

24                  COMMISSIONER PERNELL: And if they have  
25 complied with the same set of conditions the

1 certification is continued for an additional five?

2 HEARING OFFICER SHEAN: That is correct.

3 COMMISSIONER PERNELL: And if they're in  
4 violation of some -- one of these conditions or  
5 some other LORS, then the Commission has to take  
6 action as well?

7 HEARING OFFICER SHEAN: I would say  
8 under the longer version if it were a significant  
9 violation of conditions, or a significant failure  
10 to mitigate an impact where mitigation was  
11 feasible, then the Commission could find, under  
12 the longer version, that it would not continue  
13 with the certification for the second five years.

14 CHAIRMAN KEESE: Mr. Shean, I am having  
15 difficulty because I'm reading what seems like  
16 very plain language. We are granting them a ten-  
17 year certification under this language.

18 What we are saying is should they fail  
19 to meet some hurdles which are relatively low  
20 hurdles, then that ten-year granting would be  
21 terminated after five? Is that --

22 HEARING OFFICER SHEAN: Yes, sir, that's  
23 the way I would read the --

24 CHAIRMAN KEESE: Okay, so this is not --

25 HEARING OFFICER SHEAN: -- longer

1 version.

2 CHAIRMAN KEESE: -- it's not a, what  
3 we're talking about, the applicant has suggested  
4 ten with some hurdles, and basically compliance  
5 with the law?

6 HEARING OFFICER SHEAN: Yes.

7 CHAIRMAN KEESE: And they would  
8 establish that they complied with the law. If we  
9 don't feel they do, we take action?

10 HEARING OFFICER SHEAN: Correct.

11 CHAIRMAN KEESE: The one that you have  
12 put before us is a ten-year permit with the same  
13 hurdles. And if we find they haven't, then their  
14 ten-year permit would be shortened to five?

15 HEARING OFFICER SHEAN: Correct.

16 CHAIRMAN KEESE: Okay. Would staff tell  
17 us then what the difference between the two we've  
18 just heard and yours is?

19 MR. KRAEMER: First of all, in the  
20 shorter emergency-2, that's not ours.

21 CHAIRMAN KEESE: I'm saying the  
22 applicant has the one that's called emergency-2.  
23 The final is the one that --

24 MR. KRAEMER: Right.

25 CHAIRMAN KEESE: -- the Hearing Officer

1 has put before us. You have put before us one, I  
2 believe, called revised condition regarding  
3 duration.

4 MR. KRAEMER: Correct. In emergency-2 I  
5 don't see any power to expressly state it to  
6 terminate the certification earlier. It's simply  
7 relying --

8 CHAIRMAN KEESE: No, we'd have to take  
9 action. We'd have --

10 MR. KRAEMER: Right, it's relying on the  
11 Commission's power, inherent power to revoke,  
12 which puts --

13 CHAIRMAN KEESE: To handle noncompliance  
14 with conditions.

15 MR. KRAEMER: Right, --

16 CHAIRMAN KEESE: Correct.

17 MR. KRAEMER: -- which puts the burden  
18 on the Commission.

19 Our proposal is that, and this is called  
20 the revised condition of duration, or revised  
21 condition regarding duration. It just says that  
22 there will be this review in 2006. The applicant  
23 has to ask for it.

24 And if the Commission does find that  
25 those three bulleted stipulations are -- if it can

1       make those findings, then it will approve an  
2       additional five years.

3               There is one difference in the bullets.  
4       We don't consider it to be terribly significant,  
5       but I should point it out to you, there is no  
6       feasibility of the mitigation concept inherent in  
7       the second bullet. But we are willing to add that  
8       to our proposal. It's not a concern of ours.

9               COMMISSIONER PERNELL: All right, so let  
10      me get -- see if I understand your version. In  
11      five years there is a requirement for a review,  
12      but it has to be requested by the applicant, is  
13      that what you're saying?

14              MR. KRAEMER: Correct.

15              COMMISSIONER PERNELL: All right, now,  
16      the applicant -- I'm just trying to be fair here,  
17      because if the applicant is busy generating  
18      electricity and don't contact the Commission, what  
19      happens? We still have to take some type of  
20      action, correct?

21              MR. KRAEMER: Well, if they did not make  
22      the request during the time window we've provided,  
23      I suppose staff would probably, if they noticed  
24      that they had failed to do that, so they might  
25      call them.

1                   But they'd certainly be under no  
2                   obligation to do so. And if the request didn't  
3                   come in and the permit, on its own terms, under  
4                   this condition, would terminate in September of  
5                   2006.

6                   CHAIRMAN KEESE: Staff is recommending  
7                   that we call this an interim review? Interim  
8                   would seem to me to indicate that there was a  
9                   period, a longer period, and that you were  
10                  reviewing it somewhere in the middle, what was the  
11                  term you had in mind to do an interim review in?

12                  MR. KRAEMER: We didn't want them to  
13                  file, say, in 2004, so we did create a window.  
14                  The beginning of -- January 1st of 2006, which is  
15                  almost ten months ahead of the termination date --

16                  CHAIRMAN KEESE: Read the first two  
17                  lines, certification is granted for a limited  
18                  period subject to an interim review.

19                  MR. KRAEMER: Correct.

20                  CHAIRMAN KEESE: Are we -- is this a  
21                  ten-year?

22                  MR. KRAEMER: We were calling it, in our  
23                  shorthand, a five-plus-five. The idea being if  
24                  they proved that they've been good corporate  
25                  citizens --

1                   CHAIRMAN KEESE: Well, if it's five  
2                   years, it's review at the end of the period. If  
3                   it's ten, it's a review at the interim it seems to  
4                   me. I don't wish to quibble with language here,  
5                   but interim review sounds during the middle of the  
6                   term.

7                   MR. KRAEMER: Well, the assumption is if  
8                   they're a good corporate citizen and they're  
9                   adequately mitigating the impacts, then they will  
10                  have a ten-year project.

11                  I think the difference here is where the  
12                  burden is. They have to come in and convince the  
13                  Commission that it should go on, rather than the  
14                  Commission has to be convinced that it should  
15                  terminate.

16                  And there is one other difference I need  
17                  to point out. There's this notion of what we've  
18                  been calling privately the environmental baseline  
19                  that would be applied if AES were to come in at  
20                  the end of the ten years, and ask for additional  
21                  authorization to operate.

22                  And we do have legal concerns about  
23                  that. We're not sure that we can, even if we were  
24                  to agree to this, whether it would be legal. In  
25                  other words, we have some laws that apply to it,



1 CEQA and the environmental review statutes. And  
2 to the extent that this is rewriting or changing  
3 those rules, we don't believe the Commission has  
4 the authority to do that in a condition of  
5 approval.

6 To the extent that it's merely stating  
7 what the rules would be at that time, then it's  
8 probably superfluous.

9 And that's contained in the third --  
10 second-from-the-bottom paragraph on the final  
11 emergency-2. And the last paragraph of the plain  
12 emergency-2.

13 There's no similar concept in our  
14 proposal.

15 COMMISSIONER PERNELL: The last  
16 paragraph of the -- which emergency-2? I got the  
17 final. The final is --

18 MR. KRAEMER: The final, it's the  
19 second-to-last. And on the emergency-2 it's the  
20 last paragraph.

21 COMMISSIONER ROSENFELD: Mr. Chairman.

22 CHAIRMAN KEESE: Commissioner Rosenfeld.

23 COMMISSIONER ROSENFELD: It seems as if  
24 we're making big progress here, and we're haggling  
25 over very few words. I wonder if the applicant

1       would like to comment on which one of these three  
2       documents -- I must say I'm pretty comfortable  
3       with all of them. I don't see a hell of a lot of  
4       difference.

5               CHAIRMAN KEESE: It's a rather low  
6       hurdle that we're talking about here.

7               COMMISSIONER ROSENFELD: Can we pick on  
8       one and be done with this?

9               MR. BLACKFORD: Well, from the  
10       applicant's standpoint clearly we would prefer the  
11       applicant version. We look at that as a ten-year  
12       permit. You know, as Commissioner Laurie pointed  
13       out on the final or Hearing Officer, in term, that  
14       appeared to be five year, plus a discretionary  
15       extension. I believe the staff falls into the  
16       same category.

17               If it's up to the applicant to come  
18       forward after five years, it's a five-year permit.  
19       Granted the Commission may not like the burden  
20       being on them for a five-year review, but from a  
21       ten-year standpoint all of the wordage is very  
22       similar in all three. We look at the applicant  
23       version as being what we would refer to as a ten-  
24       year permit.

25               Clearly, we need to be in compliance,

1 and there are all the triggers there, and we  
2 intend to be in compliance and be, you know,  
3 upstanding as far as meeting our obligations.

4 But we look at our version as the ten-  
5 year, which is acceptable to us.

6 MR. ROTHMAN: And if I can address  
7 staff's concern about the final sentence, so to  
8 speak, of the proposed condition.

9 I --

10 COMMISSIONER ROSENFELD: The final  
11 sentence of the applicant paper?

12 MR. ROTHMAN: The sentence that relates  
13 to the --

14 COMMISSIONER PERNELL: Talks about the  
15 baseline?

16 MR. ROTHMAN: -- environmental review,  
17 and taking into account the current operations.

18 CHAIRMAN KEESE: This is the --

19 COMMISSIONER ROSENFELD: Let's see the  
20 paper, I'm confused.

21 CHAIRMAN KEESE: This is the sentence  
22 that allows it to go on after ten years.

23 MR. ROTHMAN: Let me -- okay, I'll see  
24 if I can clarify. Counsel for the staff objected  
25 to language that it felt tried to rewrite law in

1       the applicant's version of emergency-2, which  
2       happens to be the last sentence of the entire  
3       condition.

4               And I wanted to clarify that we don't  
5       believe that it does that at all. In fact, it  
6       says, to the extent permitted by law.

7               Moreover, this is an unprecedented type  
8       of certification in terms of its limitations. And  
9       what we need, and what we would like to see in a  
10      condition, is a recognition that at the time of a  
11      consideration ten years from now, that we will  
12      have valid air permits, we will have valid water  
13      permits and we will be a valid, legal operating  
14      entity.

15              And that is -- and if they're willing to  
16      stipulate to those pieces, then that that is part  
17      of whatever environmental review would take place,  
18      then we may not need this exact language.

19              But that was what this was intended to  
20      cover. What it was intended to cover was a  
21      recognition that this process, and the limitation  
22      of the duration of the certification creates a bit  
23      of an ambiguity, and we wanted to clarify that so  
24      that the recognition of the legal permitted  
25      operations of the plant were taken into account in

1 any future environmental review.

2 COMMISSIONER ROSENFELD: So you're  
3 emphasizing the fact that the last words of your  
4 proposal do say the then-existing --

5 MR. ROTHMAN: That's correct.

6 COMMISSIONER ROSENFELD: --facility to  
7 the extent permitted by law.

8 CHAIRMAN KEESE: Mr. Shean, would you  
9 like -- I believe we should have counsel for staff  
10 comment for staff.

11 HEARING OFFICER SHEAN: Sure, actually,  
12 not really. I'm not trying to sell a point. I  
13 wanted to give the Commission the range of options  
14 that I believe that were appropriate.

15 CHAIRMAN KEESE: This is another point  
16 now. We're no longer discussing five or ten.  
17 We're discussing after ten. Counsel.

18 COMMISSIONER LAURIE: Let me comment as  
19 to that, Mr. Chairman.

20 CHAIRMAN KEESE: Commissioner Laurie.

21 COMMISSIONER LAURIE: I would object  
22 sticking that language in, only because I believe  
23 CEQA mandates that. And on the one hand you could  
24 argue that if the law mandates a certain action  
25 then there's no harm in putting it in.

1                   Maybe so, but I also see it as  
2                   unnecessary; that is, in any CEQA analysis you use  
3                   the current physical conditions at the time that  
4                   the analysis is being conducted. And that's the  
5                   analysis that I expect we would be conducting ten  
6                   years from now. And I think that's what the law  
7                   says. And I don't think it's necessary to repeat  
8                   it in a specific condition of certification.

9                   COMMISSIONER PERNELL: Mr. Chairman.

10                  CHAIRMAN KEESE: Commissioner Pernell.

11                  COMMISSIONER PERNELL: I would agree  
12                  with Commissioner Laurie.

13                  We have, let me just state, as a member  
14                  of the Committee, not the Presiding Member, but  
15                  let me just state my concern here, and that is a  
16                  lot of people have put a lot of work into this,  
17                  especially the City of Huntington Beach.

18                  I think we've come a long way. And we  
19                  have, I would also agree with my esteemed  
20                  colleague, Mr. Rosenfeld, who says both -- all  
21                  three of these documents are similar.

22                  The applicant has said that they intend  
23                  to be good corporate citizens, if you will, in  
24                  terms of environment, as well as insuring that  
25                  California gets the necessary energy it needs from

1 the plants.

2 All three versions talk about a review  
3 so that the Commission, if there is any one of  
4 these conditions that hasn't been looked at or  
5 worked on, the Commission has the option of  
6 reviewing that.

7 And whether the burden of who calls who  
8 first is not that big of a concern to me. Given  
9 the amount of time that the City of Huntington  
10 Beach, the applicant and certainly our staff have  
11 worked on this, and the fact that we're going to  
12 have a review in any of these versions in a five-  
13 year timeframe or somewhere thereabout, I don't  
14 want to have this hung up on who calls who first,  
15 or who has the burden of proof.

16 The fact of the matter is if you're in  
17 violation with South Coast Air Quality District  
18 air permits, you're in violation. I don't care  
19 who calls who, you're just in violation. And that  
20 shouldn't be that hard to prove, if we're going to  
21 have the necessary review.

22 I know just from -- I'm assuming just  
23 from the testimony of Huntington Beach, Huntington  
24 Beach will call us if something is out of whack.  
25 So I just don't see the need to debate which one

1 of these we should go with and who has the better  
2 advantage.

3 What I do understand is the bottomline.  
4 And what I'm hearing here in all of these is that  
5 the bottomline is that we're going to have a ten-  
6 year limited certification with a review at the  
7 end of that. There's going to be a review within  
8 five years of whether or not they're in  
9 compliance.

10 And if they're out of compliance with  
11 laws, ordinances, they're out of compliance. I  
12 mean there's no debate about that. And I don't  
13 think that's something that they can hide from us,  
14 because we have the expertise here to find out.

15 And I don't think that's something that  
16 Huntington Beach is going to sit back and allow  
17 them to be totally out of compliance without us  
18 knowing about it.

19 So I don't think that this is as big a  
20 hurdle as the hurdles we've already crossed in  
21 relation to this facility.

22 So I would urge us to make a decision  
23 here and let's move forward. This is important to  
24 all involved, and I think especially Huntington  
25 Beach, because they're the affected community.



1 But it's also important to the State of  
2 California.

3 So I think that we should move forward  
4 and not just debate this to death in terms of who  
5 calls who. I don't care. We get a call, we're  
6 going to review it. If they're out of compliance,  
7 South Coast is going to know it, Huntington Beach  
8 is going to know it. And I would suggest that we  
9 move forward.

10 CHAIRMAN KEESE: We have --

11 COMMISSIONER LAURIE: Mr. Chairman, --

12 CHAIRMAN KEESE: -- another members of  
13 the audience who want to speak, also.  
14 Commissioner Laurie.

15 COMMISSIONER LAURIE: Thank you. I  
16 concur with Commissioner Pernell's overall  
17 statement. However, I must suggest that in my  
18 view the applicant's proposal isn't different than  
19 staff or Hearing Officer's proposal. And  
20 ultimately will come back as to what the intent of  
21 the Committee and what the ultimate policy desire  
22 of the Commission is.

23 I do consider it to be different, to  
24 have a five-plus-five than a ten. Even under the  
25 Hearing Office proposal, although it claims to be

1 a ten-year certificate, it still says that the  
2 Energy Commission will approve the continuation if  
3 evidence supports. Which means that in order to  
4 continue for an additional five years, the  
5 Commission has to make a positive finding.

6 That does, in fact, affect the burden of  
7 proof, and unfortunately it's a legal technicality  
8 that I think is relevant. Staff's proposal does  
9 the same.

10 The applicant's proposal is different.  
11 The applicant's proposal says, no, we have a ten-  
12 year permit. We recognize that you can conduct  
13 your review at anytime, but you're telling us that  
14 you're going to conduct a formal review at the end  
15 of five.

16 The problem with applicant's proposal  
17 that I see is there's no language in there that  
18 says well, what in the world happens if there's no  
19 substantial evidence that supports these three  
20 bullets. It should be made clear that compliance  
21 measures then have to be taken.

22 But I think you cannot gloss over the  
23 fact that there are legal and technical  
24 differences between the applicant's proposal and  
25 staff and Hearing Office proposal. That is one is

1       ten, subject to compliance review; and other is  
2       five, subject to positive findings to allow it to  
3       continue to another five. Those are two different  
4       legal concepts.

5               CHAIRMAN KEESE: I would, before we hear  
6       from the audience I would -- we will hear from  
7       members of the audience at this time.

8               Who cares to speak? I have a number of  
9       cards up here. Just come forward. Some people  
10      may not wish to speak, having heard where we are.

11              Identify yourself, please.

12              MR. PAC: Thank you, Commissioner. My  
13      name is Al Pac, I'm Special Counsel with the City  
14      of Huntington Beach and we've been a party  
15      throughout this proceeding.

16              First of all, let me thank you,  
17      Commissioner Pernell, for your kind words about  
18      our participation in this matter.

19              When we look at the three variations of  
20      emergency condition number 2, I think I agree with  
21      the general sentiment of the Commissioners that  
22      there really is very little difference -- we agree  
23      there's very little difference ultimately between  
24      the three.

25              The Commission has ongoing jurisdiction

1 to supervise the applicant and its activities  
2 conducted under this permit. We understand that  
3 you have jurisdiction to issue orders to show  
4 cause, to suspend or revoke the permit for a  
5 violation of any of the conditions.

6 The only question that we really see  
7 determining which one we support is whether you  
8 want to rely on carrots or sticks. As  
9 Commissioner Pernell has indicated, the City has a  
10 very strong vested interest in seeing that the  
11 applicant meets all of the conditions and  
12 mitigates all the environmental impacts.

13 So if you do not adopt either the ALJ or  
14 the staff-recommended one, I assume that the City  
15 will bring all of the sticks it has in its quiver  
16 to bear against the applicant, and bring it before  
17 the Commission.

18 But in our opinion, rather than relying  
19 on either the staff or the City of Huntington  
20 Beach to bring this matter back before you, that  
21 we take applicant at its word that it will comply  
22 with LORS, that it will comply with the  
23 conditions.

24 And that if the economics of this  
25 project are dependent on their meeting the

1 conditions that are set forth in any of these  
2 variations on the theme, that they ought to hold  
3 that burden to do that. That they ought to come  
4 before this Commission. These are not difficult  
5 matters to comply with.

6 So we would believe that you should  
7 provide them with the carrot, the incentives to  
8 come forward to meet the conditions and to make  
9 that demonstration before the Commission.

10 I would point out there is a collateral  
11 condition proposed by the City and currently  
12 included in the proposed decision that requires  
13 the applicant to come forward at the end of three  
14 years with a master plan for this site. So you'll  
15 get an early indication as to what they're  
16 intending to do. And I think that's a good  
17 precursor to the five-year review.

18 The version of the condition that we  
19 would support is the staff condition. This is the  
20 one that most closely represents and reflects what  
21 we understood current emergency-2 to mean. And it  
22 is the one that the City Council is most  
23 comfortable with, I would guess.

24 COMMISSIONER ROSENFELD: I'm sorry, Mr.  
25 Pac, I wasn't paying attention. The crucial

1           thing, what are you finally recommending, then?

2                   MR. PAC: I think the staff proposal  
3           where it indicates that there will be an interim  
4           review, that the permit is subject to a  
5           continuation of its duration based on a showing  
6           that is required of the applicant, is the one that  
7           we anticipated was the intent and meaning of the  
8           current condition 2, and the City does support the  
9           proposed decision as it's presently written.

10                   So, to the extent that the staff's  
11           version most closely comports with what we  
12           expected to be involved here in extension of the  
13           operations of this plant, this is the one that,  
14           you know, at first blush, we would support. The  
15           City Council --

16                   COMMISSIONER ROSENFELD: So it's the  
17           document that got handed out third?

18                   MR. PAC: -- 21st, so --

19                   COMMISSIONER ROSENFELD: It's the  
20           document that got handed out last?

21                   MR. PAC: Yes.

22                   COMMISSIONER ROSENFELD: Yeah, okay.

23                   CHAIRMAN KEESE: Thank you.

24                   COMMISSIONER PERNELL: Thank you.

25                   CHAIRMAN KEESE: Sir.

1                   MR. LAMB: Yes, Matt Lamb, Project  
2                   Manager with the City of Huntington Beach. I also  
3                   want to thank the Commission, Commissioner Pernell  
4                   and Commissioner Rosenfeld, as well as staff, for  
5                   going through a very arduous process in a very  
6                   short timeframe, basically in a matter of 60 days  
7                   we went through this whole process.

8                   And for us, when we went through this we  
9                   did look at it. And I think Commissioner Laurie,  
10                  you kind of couched it best. There is a distinct  
11                  difference between what is being proposed here,  
12                  and there's a reason why it's being couched, and  
13                  this little finite difference is important to us  
14                  through all this effort.

15                 What we're looking at is the energy  
16                 crisis, how efficient is this plant. There's a  
17                 lot of other collateral pieces of information that  
18                 feed into when and how you should be making  
19                 decisions.

20                 Basically, you know, the energy crisis  
21                 should be over in five years, and you should have  
22                 a chance to re-take a look at the compliance, and  
23                 also at where it fits into the fleet, and where it  
24                 meets into California's total picture.

25                 This plant is only 37 percent efficient.

1 I mean this is by no means a standard repower --  
2 by any means, even under a standard repower  
3 concept, this is basically taking some plants that  
4 have been mothballed and kick-starting them again.

5 Basically, also AES, at this point, you  
6 know, from our perspective, has not been good  
7 corporate citizens. Basically they have been  
8 fined by the AQMD, and they are potentially being  
9 fined by FERC for serious issues that we believe  
10 do, you know, put a light into our decision here.  
11 At least should be considered.

12 We are recommending that we believe that  
13 staff's version best reflects the intent. There  
14 should be a positive finding by the Commission.  
15 The applicant should be required to come back  
16 before you and prove up what they said they were  
17 going to do.

18 We did this whole thing, don't forget,  
19 in 60 days. Everything is in arrears.  
20 Everything's on the back side. So this five-year  
21 review is critical. Thank you for your time.

22 CHAIRMAN KEESE: Thank you, Mr. Lamb.  
23 I'm going to make a suggestion at this point for  
24 the applicant and staff.

25 From what I've heard up here, the



1 suggestion would be that we would give a ten-year  
2 permit. Unless the Energy Commission  
3 affirmatively finds, at the five-year review  
4 period, that the applicant is out of compliance,  
5 and the applicant fails to come into compliance at  
6 that time.

7 Would such a proposal be acceptable to  
8 the applicant? What we are saying --

9 MR. BLACKFORD: I believe that would be  
10 fine. One concern we have, and not to drag this  
11 out, is that as we say, all this wordage is very  
12 close.

13 What is very critical in a ten-year  
14 concept is how the auditors perceive this.

15 CHAIRMAN KEESE: We are saying ten  
16 years.

17 MR. BLACKFORD: Um-hum.

18 CHAIRMAN KEESE: We are saying using  
19 substantially the language you've seen and the  
20 conditions, at the period of five years we will  
21 have the review. And if, at that time, the Energy  
22 Commission affirmatively finds that you are out of  
23 compliance, and you fail to come into compliance,  
24 then the permit would end.

25 But it's a ten-year permit. And the

1       burden moves to the Commission to make the  
2       finding, and to you to fail to come into the  
3       compliance that the Commission needs.

4               MR. ROTHMAN: Just so I am clear, you're  
5       prejudging the fact that depending on the level --  
6       regardless of the level of noncompliance, that  
7       decertification is the only remedy available to  
8       you?

9               CHAIRMAN KEESE: No, I'm saying that --  
10       no. I'm saying that we would do a review, and if  
11       we find that you are out of compliance with these  
12       reasonably low hurdles, this is compliance you're  
13       supposed to be in compliance with anyway, and you  
14       fail to cure that finding, we can say -- and then  
15       the Commission could -- would that please you?  
16       And then the Commission could terminate the  
17       permit.

18              MR. ROTHMAN: The could language I think  
19       is substantially better. One of our concerns is  
20       that any significant operating entity in  
21       California that has to comply with permit  
22       conditions, conditions of certification, Clean  
23       Water Act permits, et cetera, is going to find  
24       itself at some point in time with some what could  
25       be contemplated as noncompliance.

1                   CHAIRMAN KEESE: Right. We're giving  
2                   you two chances here. One, we're going to  
3                   affirmatively find it, and two, you're not going  
4                   to cure it. And then it's up to the Commission.  
5                   Let me --

6                   MR. ROTHMAN: And so it's still up to  
7                   the -- it's still --

8                   CHAIRMAN KEESE: Okay, without going any  
9                   further, do we hear from staff?

10                  MR. LARSON: Mr. Chairman, we think that  
11                  the staff proposal is reasonable and responsible.  
12                  And that it keeps control of the situation within  
13                  the Commission, and that it ought to stand.

14                  CHAIRMAN KEESE: Thank you. I see we  
15                  have other people in the audience. Would you like  
16                  to present --

17                  MAYOR COOK: Good morning; it's great to  
18                  finally be here. I thought it might be continued  
19                  until I was out of office.

20                  (Laughter.)

21                  MAYOR COOK: My name is Debbie Cook; I'm  
22                  the Mayor Pro Tem of Huntington Beach, and I'm  
23                  pleased to be here today.

24                  First, I want to thank a few people, Mr.  
25                  Shean, Mr. Caswell and the Commission Staff, for

1 all their technical work. Also, Mr. Pernell and  
2 Mr. Rosenfeld. It was really wonderful to have  
3 you come down to the community. Many members  
4 thanked me afterwards and commented on how  
5 wonderful it was to have you take such an interest  
6 in what the community wanted. So thank you very  
7 much for that.

8 From the beginning the City of  
9 Huntington Beach has sought to work cooperatively  
10 with the Commission for both protection of the  
11 people and our environment, as this tired power  
12 generation plant is brought back to life.

13 As you are well aware, the retooling of  
14 this 40-year-old plant is clearly a poor second  
15 choice for our community. However, within the  
16 conditions proposed in some of the earlier  
17 renditions I saw, we really would look forward to  
18 a master plan that would deliver a clean,  
19 contemporary facility that AES and the City could  
20 be proud.

21 And I would like to weigh in on all  
22 these choices. We would strongly support the  
23 staff's position. It's wonderful to speak about  
24 intent of a corporation. I prefer to look at  
25 their track record, which has not been very good

1 in the case of AES.

2 In conclusion, the City of Huntington  
3 Beach recognizes the extraordinary circumstances  
4 the State of California faces in this energy  
5 crisis, and therefore would support a five-year  
6 permit. And then re-examination of that. And  
7 then an extension if it's warranted.

8 But we really feel very strongly that we  
9 need the five-year review of this project. So  
10 thank you very much and good luck with your  
11 deliberations.

12 COMMISSIONER PERNELL: Thank you.  
13 Welcome to Sacramento.

14 CHAIRMAN KEESE: Thank you. Anybody  
15 else?

16 MR. MAXIM: Good morning; my name is  
17 Gregory Maxim, and I'm with the firm of Ellison,  
18 Schneider and Harris. And I'm here today speaking  
19 on behalf of the Independent Energy Producers.

20 In general IEP fully supports the  
21 Commission's adoption of the PMPD authorizing the  
22 retooling of the existing Huntington Beach  
23 Generating Station.

24 The retooling of the station will  
25 provide some relief from the current crisis that

1       we are suffering under. And while these 450  
2       megawatts will not alleviate the crisis facing our  
3       state, it is indeed a necessary step that must be  
4       taken by this state and by the Commission.

5               To that end, IEP applauds the Commission  
6       and staff's efforts to quickly and thoroughly  
7       address this situation.

8               Despite the benefit that California will  
9       receive from Huntington Beach's 450 megawatts, if  
10      the Commission were to hold this decision as a  
11      precedent, we believe that that would be an  
12      unfortunate decision because we believe that the  
13      California first limitations violate the commerce  
14      clause and will inadvertently have the opposite  
15      effect of decreasing the amount of power available  
16      to California.

17              COMMISSIONER LAURIE: Say that again.  
18      If we do -- if we hold what as precedent?

19              MR. MAXIM: The California first  
20      limitations of requiring the power to be within  
21      the state.

22              COMMISSIONER LAURIE: Okay.

23              MR. MAXIM: I don't mean to belabor the  
24      point of the commerce clause arguments, because I  
25      believe that that's been thoroughly addressed

1       within the briefing.

2               But IEP continues to believe that while  
3       the permitting aspect is clearly within the  
4       jurisdiction of this Commission, the matter of  
5       sale of electricity is a wholly different matter  
6       all together, and as such, would violate the  
7       commerce clause.

8               Our second point is that the  
9       Commission's California first sales requirement  
10       would suffer from the law of unintended  
11       consequences. In other words, restricting the  
12       sale to only inside the state will do exactly the  
13       opposite of what it's intended to do. Namely,  
14       you'll be decreasing the supply of electricity to  
15       California instead of increasing it.

16              You'll find that other states will  
17       probably quickly follow the lead of California by  
18       imposing similar restrictions if this decision is  
19       held as precedent on the export of their  
20       electricity from their own state.

21              If the Commission adopts this measure,  
22       then California will surely be sending a signal to  
23       other states encouraging this type of behavior.  
24       Because California has been so dependent upon its  
25       neighboring states in the west to exported power

1       during this crisis, California's been walking a  
2       very thin tightrope. As a state which requires  
3       imports from other states to keep its lights on  
4       during this crisis, California must not send this  
5       protectionist message to its neighbors through the  
6       adoption of this provision.

7               And our second point on this is that the  
8       California first provision will have the effect of  
9       discouraging the construction of other power  
10      plants in the state if this is held as precedent.  
11      If the Commission adopts this provision, other  
12      would-be siting projects could be discouraged from  
13      entering or expanding their presence in the  
14      California market for fear that they'll be forced  
15      to adopt similar California first sales  
16      requirements.

17             IEP is grateful for this opportunity to  
18      comment on this very important decision. And we  
19      applaud the Commission and staff's commitment to  
20      solving this crisis. Thank you.

21             CHAIRMAN KEESE: Thank you. Mr. Wolfe.

22             MR. WOLFE: Good morning, Commissioners.  
23      Mark Wolfe for CURE. Very quickly, we support  
24      staff's version of emergency-2, and I'd just like  
25      to articulate what I perceive as an over-arching



1 principle that probably bears repetition here.

2 Which is that if it weren't for the  
3 energy crisis there's no way that this project  
4 would be certified. I think we all, at least on  
5 our side and on the City's side, perceive it that  
6 way. This, as Matt Lamb articulated very clearly,  
7 is a vintage, highly inefficient, two boiler units  
8 down there. And I think the circumstances are  
9 even more irregular and more anomalous than have  
10 been stated so far today.

11 So, with that in mind, I think the  
12 original staff assessment, as best I recall, and  
13 the original version of the PMPD provided for a  
14 five-year certification, period. With the  
15 possibility of reapplying for a license for a new  
16 project following the submittal of a master plan.

17 It wasn't until the amended PMPD came  
18 out that even the possibility of a ten-year term  
19 was put forward, as best I recall.

20 And so I think in keeping with the big  
21 picture perception that these are highly irregular  
22 times that we're facing, and as a result we are  
23 dealing with this highly irregular process, both  
24 substantively and procedurally.

25 Staff's proposed condition, of the

1       three, I think remains the truest to the situation  
2       that we're actually in. Thank you.

3               CHAIRMAN KEESE: Thank you. I would  
4       observe, Mr. Wolfe, that there's two sides to this  
5       coin. If we didn't have the energy crisis, this  
6       proposal would not be before us. The applicant  
7       wouldn't be interested in this proposal, either.

8               MS. MENDONCA: Chairman Keese, are you  
9       planning to call for the phone comments at this  
10      time?

11              CHAIRMAN KEESE: Do we have anybody else  
12      in the audience who cares to speak to this issue?  
13      Do we have anybody in the audience on the  
14      telephone who would like to speak to this issue?  
15      And I would like them to do it one-by-one, please.  
16      Anybody on the phone?

17              MS. MENDONCA: Yes, is Huntington Beach  
18      here?

19              CHAIRMAN KEESE: Yes, would you identify  
20      yourself, please, and a brief comment.

21              MR. WINCHELL: My name is Robert  
22      Winchell. I'm a resident of Huntington Beach.  
23      I've been very interested in your discussion,  
24      which has been very good. Although the acoustics  
25      could be better here.

1                   Nonetheless, I would say that as a  
2                   resident of Huntington Beach and an involved  
3                   member of the public that we are adamantly in  
4                   favor of the staff's recommendation. Five years,  
5                   review, an additional five years if they warrant  
6                   it.

7                   And the issues which have been raised  
8                   are the issues which have been discussed through  
9                   this whole process, mainly things like the modern-  
10                  ness of the plant, and what might be best later  
11                  on. The aesthetics of the issue; the air  
12                  pollution, obviously standards change, and they  
13                  would have to comply with those. But they might  
14                  be able to do that by patching up what is, in  
15                  fact, past technology at that particular point in  
16                  time.

17                  We want the best possible plant we can  
18                  have in this Huntington Beach vicinity. And that  
19                  means modern technology, not just compliance with  
20                  regulations, but the best for the City. And we  
21                  expect that of AES.

22                  We hope the Commission will support that  
23                  concept. And finally, we therefore support the  
24                  staff's recommendation as much as we possibly can.  
25                  We hope the Commission, and we encourage the

1 Commission to adopt that.

2 Thank you very much for the opportunity  
3 to speak.

4 COMMISSIONER PERNELL: Thank you.

5 MR. McCORD: This is Bill McCord. I'm a  
6 neighbor of the plant in Huntington Beach. I also  
7 want to support the staff's recommendation.

8 I think, if I may say so with all due  
9 respect, it's naive to say that where the burden  
10 is does not make a difference. I'm a former  
11 municipal attorney, and I know it does make a  
12 difference. The burden should be on the applicant  
13 to establish compliance. The burden should be on  
14 the applicant to come forward to extend beyond the  
15 five-year period.

16 As I understand staff's proposal, it  
17 begins the review period ten months before the end  
18 of the five-year period. What you have to do is  
19 put the burden on the applicant during that ten-  
20 month period to establish compliance at the end of  
21 that first five-year period, or all things stop.

22 If the burden's on the Commission, and  
23 that burden stops at the end of the five-year  
24 period, then we start some kind of proceedings  
25 that could last several years while the applicant

1 continues to operate.

2 So effectively you're giving the  
3 applicant maybe an eight-year period of operation,  
4 not a five-year period.

5 So, I think it's disingenuous to say  
6 that these are legal technicalities, and the  
7 burden doesn't matter. If the burden doesn't  
8 matter, let the applicant accept the burden, if  
9 the burden doesn't matter.

10 Thank you.

11 CHAIRMAN KEESE: Thank you, sir.

12 COMMISSIONER PERNELL: Thank you.

13 MR. LOY: This is Rich Loy. I live down  
14 in the southeast portion of Huntington Beach.  
15 I've been a resident there since 1974. I live  
16 about within a quarter mile of the power  
17 generation plant there.

18 The whole basis of this exercise  
19 apparently is to provide electricity in an  
20 emergency situation. Now, from everything I've  
21 read, within five years that emergency situation  
22 is to be over.

23 In the meantime it appears that AES has  
24 used this energy crisis to almost use a subterfuge  
25 to rebuild this old unit, rather than what

1 originally was proposed, was to build a state of  
2 the art plant on that property.

3 Now, I'd like to know what exactly, what  
4 relief you're going to give to the residents that  
5 are going to have to breathe these emissions, and  
6 the children and all the schools around that power  
7 generating facility, what relief are you going to  
8 give to them to have to breathe these emissions  
9 into their lungs for the next ten years.

10 I don't even feel five years is  
11 appropriate, to tell you the truth. I'm not in  
12 agreement with this at all, you know. I feel that  
13 this is almost outrageous, what's being attempted  
14 to be foisted upon the public down here in  
15 southeast Huntington Beach.

16 You know, I'm -- you know, I'm just  
17 totally flabbergasted that this is allowed to even  
18 proceed.

19 Cost effectiveness? That's all I've  
20 ever heard from AES. Well, whose cost  
21 effectiveness? Their cost effectiveness. Not to  
22 the citizens or residents and children that have  
23 to breathe in these emissions.

24 And, you know, the only way they're  
25 really going to meet these emissions level is

1 through the purchase of smog credits. Guess who's  
2 paying for those smog credits? The taxpayers are  
3 paying for that. So we're already subsidizing  
4 this AES Corporation, their power generation.

5 I hope that you folks think long and  
6 hard about this decision before you make it. You  
7 know, I've said before, I hope you don't involve  
8 yourself in a dereliction of duty up there in  
9 Sacramento. You know, I know you've worked hard  
10 on this, but please, you know, we, the residents  
11 that are directly impacted by the emissions coming  
12 out of that plant, and with the smog credits, all  
13 they're going to be allowed to do is increase the  
14 quantity and the amounts of emissions, and we're  
15 going to have to breathe all that into our lungs.

16 So, please, please consider us when you  
17 make a decision on this. And thank you very much,  
18 I appreciate your time and the effort that you've  
19 spent on behalf of the people of the State of  
20 California.

21 COMMISSIONER PERNELL: Thank you.

22 CHAIRMAN KEESE: Thank you. Do we have  
23 anyone else on the telephone? Thank you. We have  
24 one other in the audience, please.

25 MR. WOODRUFF: Good morning,

1       Commissioners. My name is Mark Woodruff. I'm  
2       President of AES Southland, of which the  
3       Huntington Beach facility is a part of my  
4       responsibilities.

5               COMMISSIONER LAURIE: I'm sorry, you're  
6       President of?

7               MR. WOODRUFF: AES Southland, which is  
8       the company that owns the Huntington Beach  
9       facility, --

10              CHAIRMAN KEESE: Thank you.

11              MR. WOODRUFF: -- part of the AES  
12       Corporation.

13              Appreciate your indulgence in all the  
14       time that it's taken and the delays that we've  
15       had. As you are aware, and as Mr. Blackford  
16       reiterated, we've had an agreement with the state  
17       in early March to sell electricity. That has been  
18       and continues to be the basis of our discussions.

19              But as Ed mentioned, the credit issues  
20       are very material in relating to how the bonds are  
21       sold. When we sold the economics of that we  
22       presumed that this was going to be an unlimited  
23       certification, as every other certification has  
24       been.

25              And contrary to some of the comments



1       you've heard, this plant, according to the staff's  
2       own testimony on the record, this plant will be,  
3       if not the cleanest, but among the cleanest plants  
4       you've ever certified, period.

5               And we think there's no need to  
6       apologize, regardless of the age of the technology  
7       there, for the environmental impacts of this  
8       facility.

9               We believe that as a consequence the  
10      benefit of the bargain that we have, that we need  
11      certainly certification, clear certification  
12      longer than five years. We've said that  
13      continually on the record. We maintain that  
14      position today.

15              And it would cast doubts as to whether  
16      the facility would ever be built if the  
17      certification were shorter than that.

18              Last, I want to speak to the issue about  
19      recertification, or re-permitting the site at the  
20      end of the term of certification. We believe  
21      there's an important policy question here before  
22      the Commission, and we would like the Commission  
23      to make an affirmative statement that this plant  
24      is to be used for power generation down the road,  
25      and we would like everyone to recognize that.

1                   We think that to come back and the  
2                   conditions of certification now require  
3                   demolition, the City and others have made it clear  
4                   that they would like to see this property used for  
5                   something else, notwithstanding people's comments  
6                   on the record today that they would like other  
7                   power generation, we believe that those are  
8                   disingenuous comments.

9                   And that we would like to see an  
10                  affirmative policy statement and recognition that  
11                  environmental impact analysis down the road,  
12                  whenever certification ends, would be used for  
13                  power generation, and that the baseline for  
14                  environmental analysis would recognize that we  
15                  would be holding valid air permits, federal PSD  
16                  permits, valid water permits. And that the site  
17                  there -- other impacts, rather than to go through  
18                  another analysis, require more impacts.

19                  You will send an important policy  
20                  message to other power -- owners of other  
21                  facilities that will make it harder to use  
22                  existing sites for power generation, which I think  
23                  is exactly counter to the interests that you have  
24                  to see existing sites reused.

25                  The condition that's requiring shutdown

1 of existing facilities is also counter to that.  
2 And we think it is important to make a statement  
3 on the record about the intent of how  
4 environmental impact analysis is used, whether one  
5 believes that CEQA requires that or not.

6 I thank you for your time. And  
7 obviously we support the ten-year certification.

8 CHAIRMAN KEESE: Thank you. Bear with  
9 us a moment, please.

10 (Pause.)

11 CHAIRMAN KEESE: At this time we are  
12 going to do two things. We are going to go into  
13 an executive session to discuss one of the issues  
14 today that was raised that has legal  
15 ramifications.

16 I have a version here that we'd like to  
17 see counsel work at and share with the other  
18 parties. And we'll come back in 15 minutes,  
19 reconvene. We're going into executive session.  
20 Thank you.

21 (Whereupon, at 11:22 a.m., the  
22 Commission adjourned to Executive  
23 Session, to reconvene later this same  
24 day.)

25 --o0o--

1 P R O C E E D I N G S

2 11:38 a.m.

3 CHAIRMAN KEESE: What we're going to do,  
4 as soon as Mr. Rosenfeld returns, is we're going  
5 to put this item over for a few minutes and take  
6 up a couple of other items.

7 Our legal counsel is drafting version  
8 four, which he will present to everyone to look  
9 at. That should not take very long. And so we'll  
10 just recess this issue for a moment, and we were  
11 going to take up the Hanford Energy Park.

12 For those on the telephone, we are back  
13 in session at the Energy Commission. And we are  
14 putting over for a few minutes the Huntington  
15 Beach project while we deal with another project.  
16 Our legal counsel is preparing an alternative  
17 emergency-2 order.

18 What we have is item 1, Hanford Energy  
19 Park Peaker Power Plant Project. Consideration  
20 and possible adoption of the Committee's proposed  
21 decision recommending certification for the  
22 Hanford Energy Park Peaker Project, docket number  
23 01-EP-7, a 95 megawatt power plant proposed to be  
24 located in Hanford City.

25 Commissioner Rosenfeld.

1                   COMMISSIONER ROSENFELD: This is a much  
2 more pleasant issue. I guess we want to hear from  
3 the Hearing Officer, Amanda Behe.

4                   ADMINISTRATIVE LAW JUDGE BEHE: Good  
5 morning, Commissioners, I'm Administrative Law  
6 Judge Amanda Behe with the Office of  
7 Administrative Hearings assigned to this case,  
8 sitting with Commissioner Rosenfeld.

9                   A public hearing was heard in this  
10 matter in Hanford. You have the proposed decision  
11 of Commissioner Rosenfeld.

12                  There is the need, due to information  
13 that was updated by the applicant, to change the  
14 reference on page 4 at the top from number of  
15 hours per year of 4000 to 8000 for the years 2002  
16 through 2011.

17                  COMMISSIONER ROSENFELD: And that's the  
18 only comment the staff has to make, otherwise  
19 you're in favor of the proposed decision?

20                  ADMINISTRATIVE LAW JUDGE BEHE: Yes,  
21 that is the only change to the proposed decision  
22 which updated information would suggest.

23                  CHAIRMAN KEESE: And that's agreed to by  
24 both the applicant and staff, is that what you're  
25 presenting to us?

1 ADMINISTRATIVE LAW JUDGE BEHE: I'm  
2 sorry, sir?

3 CHAIRMAN KEESE: And that's agreed to by  
4 applicant and staff?

5 ADMINISTRATIVE LAW JUDGE BEHE: I have  
6 not heard to the contrary from either applicant,  
7 who is represented here by Doug Wheeler, with Mr.  
8 Grattan, their attorney, or staff, Mr. Eller.

9 CHAIRMAN KEESE: Thank you.

10 COMMISSIONER PERNELL: Could we hear  
11 from them?

12 CHAIRMAN KEESE: Shall we hear from  
13 staff?

14 MR. ELLER: Good morning, Commissioners,  
15 Bob Eller, Project Manager for Commission Staff.  
16 The staff has reviewed the proposed decisions and  
17 the changes proposed this morning. And we agree  
18 with the decisions and recommend its adoption.

19 CHAIRMAN KEESE: Thank you. Applicant.

20 MR. GRATTAN: That is correct. The  
21 applicant also agrees and recommends its adoption.  
22 I would note for the record that we've reviewed  
23 the staff errata dated May 9th, and we agree with  
24 the staff errata and would have that incorporated  
25 into the decision.

1 CHAIRMAN KEESE: Thank you.

2 COMMISSIONER ROSENFELD: Mr. Chairman, I  
3 have to say this was the most pleasant hearing  
4 I've ever been at. Unlike the previous Huntington  
5 Beach, GWF has made itself welcome and a great  
6 neighbor in the community. Not a single comment  
7 adverse was made, either by anybody in the  
8 community or anybody over the telephone.

9 And I think I'm ready to propose that we  
10 accept my proposed decision.

11 CHAIRMAN KEESE: We have a motion to  
12 accept the application as put before us, with the  
13 errata, and with the change recommended detailed  
14 for us by the Hearing Officer.

15 Do I have a second?

16 COMMISSIONER PERNELL: Second.

17 COMMISSIONER LAURIE: Question, Mr.  
18 Chairman.

19 CHAIRMAN KEESE: Motion, Commissioner  
20 Rosenfeld; second, Commissioner Pernell.

21 Commissioner Laurie.

22 COMMISSIONER LAURIE: On terms of  
23 certification regarding the extension, and we go  
24 through the criteria, and I think I have the  
25 latest version, May 7th, I guess so.

1                   On page 15 down at the bottom of the  
2                   page, second-to-last paragraph: The project shall  
3                   be certified for the length of GWS power purchase  
4                   agreement with Resources."

5                   "If, at the end of its power purchase  
6                   agreement the project owner can verify that the  
7                   project complies with the following conditions,  
8                   the Energy Commission shall extend the  
9                   certification." Okay.

10                  But then you go to the next paragraph  
11                  and it goes, "Six months prior to expiration owner  
12                  shall provide verification that the project will  
13                  meet the following criteria in order to continue  
14                  the permit through the life of the project."

15                  I don't know what those words mean:  
16                  Meet the following criteria in order to continue  
17                  the permit through the life of the project.

18                  Does that make sense? It doesn't make  
19                  sense to me.

20                  ADMINISTRATIVE LAW JUDGE BEHE: I  
21                  believe, Commissioner, this is the language  
22                  adopted in the past five such decisions of the  
23                  Commission.

24                  COMMISSIONER LAURIE: That is irrelevant  
25                  to me.



1                   ADMINISTRATIVE LAW JUDGE BEHE: If it is  
2 helpful, Commissioners, the applicant here does  
3 not, as yet, have an agreement with GWF in place.  
4 We don't know the length of the contract with GW -  
5 - DWR. Moreover the applicant intends to operate  
6 this project or this facility for only 11 years, I  
7 believe.

8                   MR. ELLER: That is correct.

9                   COMMISSIONER LAURIE: Okay, but what I'm  
10 trying to get at is it says if you do all this,  
11 then the permit is being allowed to continue  
12 through the life of the project. And that's what  
13 I don't understand.

14                   Is that a specific -- is there a  
15 termination date? I don't know what "through the  
16 life of the project" means. That's my concern. I  
17 don't know what those words mean.

18                   CHAIRMAN KEESE: Commissioner Laurie, my  
19 memory may not be perfect, but if I recall a  
20 number of the other cases we have had projects in  
21 which this would have been relevant, and that was  
22 that these were 30-year -- these were projects  
23 proposed with a 30-year life. And we referenced  
24 that in the documents.

25                   COMMISSIONER LAURIE: Well, maybe so,

1 but the --

2 CHAIRMAN KEESE: I think you're making a  
3 very valid point here, we --

4 COMMISSIONER LAURIE: My concern is --  
5 I'm sorry, we're dealing with an important point,  
6 that is the life of the permit. And that may not  
7 be relevant today, but I guarantee you it may be  
8 relevant in 10 or 12 or 15 years.

9 So, what I want to determine is by what  
10 it means if we grant the permit through the life  
11 of the project. I don't know what that means.  
12 Does it make sense to everybody else? And am I  
13 just missing it?

14 CHAIRMAN KEESE: Does applicant have --  
15 would applicant like to clarify what they mean?

16 COMMISSIONER LAURIE: Mr. Ogata says I'm  
17 just missing it.

18 MR. GRATTAN: Well, it's not our  
19 document, but our interpretation would be for the  
20 economic life of the project, the remaining  
21 economic life of the project.

22 COMMISSIONER LAURIE: And that could  
23 mean in perpetuity?

24 MR. GRATTAN: That is normally 30 years,  
25 but --

1                   COMMISSIONER PERNELL: Well, Mr.  
2           Chairman, I think I heard the applicant right in  
3           saying that it's an 11-year project.

4                   MR. WHEELER: Doug Wheeler again on  
5           behalf of the applicant. The contract that we're  
6           negotiating with California Department of Water  
7           Resources is a ten-year contract.

8                   Obviously, at the end of the contract  
9           period, depending on what the market conditions  
10          are, the project may still have economic life at  
11          the end of the ten years, in which case we would  
12          want to continue to operate the facility.

13                  COMMISSIONER LAURIE: And so it sounds  
14          like the intent is to, provided these conditions  
15          are met, to allow continuation of the use at the  
16          will of the applicant, which may be fine. I'm  
17          just suggesting that adding the language "through  
18          the life of the project", that language is  
19          amorphous and ambiguous.

20                  And if it's our intent to just let it  
21          operate without a termination provision, then we  
22          should eliminate the last portion of that  
23          sentence.

24                  COMMISSIONER ROSENFELD: I think you  
25          have a good point.

1 CHAIRMAN KEESE: Legal counsel.

2 MR. ELLER: I'm not legal counsel, but  
3 Bob Eller for project staff --

4 CHAIRMAN KEESE: I'm seeing legal  
5 counsel standing -- sitting there behind you.

6 MR. ELLER: I would point out on behalf  
7 of staff that all of the decisions we put forth,  
8 while not solely stated for the life of the  
9 project, are for the life of the project.

10 CHAIRMAN KEESE: Which is unlimited?

11 MR. ELLER: Unlimited. Typically we  
12 believe the project will last 30 years, but  
13 there's no conditions placed upon any of the  
14 decisions on applications for certification.

15 CHAIRMAN KEESE: I think Commissioner  
16 Laurie is moving we take that language out. It  
17 sounds like Commissioner Rosenfeld agrees.

18 COMMISSIONER LAURIE: If it's a term of  
19 art, and everybody understands what it means,  
20 well, that's okay. I just don't understand what  
21 it means.

22 MR. GRATTAN: If it would make the  
23 Commission feel better to line everything through  
24 after "permit", that's certainly acceptable to us.  
25 A 30-year period is acceptable to us, if the

1 Commission feels it has to spell it out.

2 We do have to meet criteria to get that  
3 extension.

4 COMMISSIONER ROSENFELD: How about  
5 taking out "through the life of the project" and  
6 just ending the sentence with continue the permit?

7 COMMISSIONER LAURIE: That would be my  
8 recommendation.

9 CHAIRMAN KEESE: Commissioner Laurie,  
10 would you, for the record, give us a  
11 recommendation?

12 COMMISSIONER LAURIE: Yeah, I would  
13 concur with Mr. Rosenfeld's comment that I think  
14 the intent is to place a period after the word  
15 permit.

16 MR. GRATTAN: As I said, that is  
17 certainly acceptable to the applicant.

18 COMMISSIONER LAURIE: Probably  
19 preferable to the applicant.

20 COMMISSIONER ROSENFELD: I move we  
21 accept Commissioner Laurie's comment.

22 CHAIRMAN KEESE: Okay.

23 COMMISSIONER PERNELL: I second with  
24 the --

25 CHAIRMAN KEESE: So what we've done is

1       amended the motion that's before us to include the  
2       errata, the --

3               COMMISSIONER LAURIE: I have another  
4       one.

5               CHAIRMAN KEESE: -- Hearing Officer's  
6       recommendation and Commissioner Rosenfeld's.

7               Commissioner Laurie.

8               COMMISSIONER LAURIE: Under then item  
9       number one as to what the criteria is. The  
10      project is permanent rather than temporary or  
11      mobile in nature. What I'm trying to do is avoid  
12      a confrontation as to definition when we get to  
13      this point.

14              I don't understand the term the project  
15      is permanent rather than temporary or mobile in  
16      nature. Can we define that? Even if we have it  
17      in the record, that's helpful, because I don't  
18      know what that means.

19              MR. GRATTAN: This is probably the  
20      staff's to answer, but my recollection is that is  
21      a quote from the 21-day emergency regulations that  
22      there is some explanation of exactly what that  
23      means.

24              MR. ELLER: That's correct. Staff  
25      believes that the projects are permanent if they

1       have foundations, they're permanently mounted  
2       structures.

3               There are projects that we may see that  
4       involve trucks, involve skid-mounted generators.  
5       Those would not be considered permanent.

6               COMMISSIONER LAURIE:   Okay, so in  
7       staff's view, which is presumably part of the  
8       record, when we talk about permanent we're talking  
9       about permanent physical foundation.

10              MR. ELLER:   More on the order of a  
11       typical facility that we would permit, yes.

12              COMMISSIONER LAURIE:   That's  
13       satisfactory to me, Mr. Chairman.

14              CHAIRMAN KEESE:   Thank you.   A motion  
15       and a second.   Do we have any other comments?

16              All in favor?

17              (Ayes.)

18              CHAIRMAN KEESE:   Opposed?   Adopted four  
19       to nothing.

20              MR. GRATTAN:   Wonderful.   I think just  
21       as an exit line now that we've got our tag I think  
22       Doug Wheeler would like probably to tell you when  
23       we're going to begin construction.

24              And also I'd like to --

25              CHAIRMAN KEESE:   Yes, and since --

1 MR. GRATTAN: -- and Dave Stein from  
2 URS --

3 CHAIRMAN KEESE: -- we did this in the  
4 right order, and, Mr. Grattan, we'll --

5 MR. GRATTAN: No, I did it in the wrong  
6 order.

7 CHAIRMAN KEESE: -- we'll give you a  
8 couple minutes to say something here.

9 MR. GRATTAN: Thank you.

10 MR. WHEELER: Thank you much for your  
11 consideration. As John indicated, our intention  
12 is to commence construction on or about May 23rd.

13 CHAIRMAN KEESE: And be in operation?

14 MR. WHEELER: Be in operation by the  
15 first of September.

16 CHAIRMAN KEESE: Thank you.

17 MR. GRATTAN: Thank you.

18 CHAIRMAN KEESE: Thank you. Item 2,  
19 change of ownership, possible approval of a change  
20 of ownership for the Sunrise Power Project from  
21 Mission del Sol, LLC, a wholly owned affiliate of  
22 Edison Mission Energy, to the Sunrise Power  
23 Company, LLC, consisting of Mission del Sol, LLC,  
24 and Texaco Power and Gasification Holdings, Inc.

25 MS. TRONAS: Good morning.



1 CHAIRMAN KEESE: Good morning.

2 MS. TRONAS: I'm Nancy Tronas,  
3 Compliance Project Manager for this project. This  
4 petition was filed in compliance with section 1769  
5 of the California Code of Regulations. And the  
6 petition does request that 50 percent of the  
7 ownership be transferred from Mission del Sol,  
8 which is an affiliate of Edison Mission Energy, to  
9 Texaco Power and Gasification Holdings.

10 In response to previous questions by the  
11 Siting Committee regarding outstanding NOVs that  
12 were associated with Texaco, compliance staff has  
13 been in communication with USEPA and the  
14 Department of Justice, and they have informed us  
15 that their issues have been resolved; that Texaco  
16 has signed a consent decree; and they are  
17 satisfied with the progress in this matter.

18 And staff recommends approval of the  
19 ownership change.

20 COMMISSIONER LAURIE: I'd move the  
21 recommendation, Mr. Chairman.

22 CHAIRMAN KEESE: Motion, Commissioner  
23 Laurie.

24 COMMISSIONER ROSENFELD: Second.

25 CHAIRMAN KEESE: Second, Commissioner

1       Rosenfeld. Anybody in the audience care to speak  
2       to this issue?

3               All in favor?

4               (Ayes.)

5               CHAIRMAN KEESE: Opposed? Adopted four  
6       to nothing.

7               MS. TRONAS: Thank you.

8               CHAIRMAN KEESE: You're very welcome.

9               Item 3, peak demand reduction program.  
10       This item essentially has been superseded by  
11       executive orders of the Governor, which have  
12       passed this responsibility on to a Committee. And  
13       these items will not be coming before the Energy  
14       Commission.

15              I don't see legal counsel. Mr. Shean,  
16       have you received anything yet?

17              HEARING OFFICER SHEAN: No, sir.

18              CHAIRMAN KEESE: Then -- legal counsel  
19       is approaching, but we'll give you a few moments  
20       to -- we'll take a few moments.

21              Energy Commission Committee and  
22       Oversight. Do we have anything to report?

23              SECRETARIAT: We also have the Mojave  
24       Desert Air Quality -- it was a carryover.

25              CHAIRMAN KEESE: All right. Thank you

1       for bringing that up. We have a continuation of  
2       item 7 from a previous meeting, Mojave Desert Air  
3       Quality Management District, docket number 88-AFC-  
4       1. And we will take up that issue at this time.  
5       Who is presenting Mojave?

6               MR. OGATA: Good morning, Chairman  
7       Keese, Commissioners, my name is Jeff Ogata. I'm  
8       a staff attorney at the Commission.

9               This is a matter that we started to talk  
10      about last meeting. It's part of the Luz  
11      Development and Finance bankruptcy.

12              On December 14, 1995, Harper Lake  
13      Company, who's the managing general partner of the  
14      Luz Solar Partnerships 8 and 9, which are the  
15      owners of the SEGS 8 and 9 facilities, submitted a  
16      request for an amendment to their respective  
17      decisions that would, among other things, modify  
18      the air quality conditions regarding NOx  
19      emissions.

20              The Mojave Desert Air Quality Management  
21      District has previously analyzed and approved the  
22      request. However, staff postponed action on this  
23      request because of the bankruptcy proceeding and  
24      other associated lawsuits.

25              Now that we are close to resolving the

1 bankruptcy proceeding, one of the -- this is a  
2 loose end, and we have agreed that we would  
3 proceed with the air quality amendment and bring  
4 it to the Commission for possible approval, as one  
5 of the terms of the settlement.

6 Staff has analyzed the historical  
7 emissions from the SEGS 8 and 9 plants, and  
8 compared them to the offsets provided and  
9 available to the projects. Staff believes that  
10 there are sufficient offsets for the increased NOx  
11 emission levels and that the additional amendment  
12 requests are justified.

13 Therefore, staff has recommended  
14 approval of this amended request.

15 What I've just handed you is a slight  
16 revision to the adoption order that was previously  
17 supplied to you as part of your packet. It just  
18 makes some additional clarifications that we have  
19 worked out in our discussions with representatives  
20 of the project owners in the last couple of days.  
21 Nothing very substantive, again, just  
22 clarification about some of the conditions.

23 So we would request that you adopt this  
24 amendment request.

25 CHAIRMAN KEESE: Thank you, Mr. Ogata.

1 COMMISSIONER LAURIE: Move the  
2 recommendation.

3 CHAIRMAN KEESE: Motion, Commissioner  
4 Laurie.

5 COMMISSIONER ROSENFELD: Second.

6 CHAIRMAN KEESE: Second, Commissioner  
7 Rosenfeld. Any public comment?

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Adopted four  
11 to nothing.

12 COMMISSIONER LAURIE: Good job with  
13 that, Jeff.

14 CHAIRMAN KEESE: Secretariat?

15 SECRETARIAT: Pardon me?

16 CHAIRMAN KEESE: Am I done with my  
17 agendas, now?

18 (Laughter.)

19 CHAIRMAN KEESE: Okay. Item 4, Energy  
20 Commission Committee and Oversight, do we have any  
21 reports at this time?

22 Okay, let's take the Executive  
23 Director's report, Mr. Larson.

24 MR. LARSON: I have nothing to report  
25 today except we were scheduled to have a briefing

1 following this meeting, talk about some management  
2 issues. If you wish to postpone that a week I  
3 suppose we can do that.

4 CHAIRMAN KEESE: I think we're going to  
5 have to do that -- we'll postpone that.

6 Public Adviser's report.

7 MS. MENDONCA: Mr. Chairman and  
8 Commissioner, back in February the Public Adviser  
9 did a survey which we mailed a rather simple, but  
10 straightforward, questionnaire out to applicants,  
11 applicant consultants and others that work with  
12 applicants in the course of the siting process,  
13 asking for feedback on how the Public Adviser's  
14 Office was doing.

15 We have received back our results and  
16 have tabulated the results. And I'm about to  
17 issue my status reports for the first trimester,  
18 and will include that feedback.

19 Basically we did very well.

20 CHAIRMAN KEESE: Thank you. At this  
21 time we do have time for public comment. I am  
22 informed that we may have someone on the phone who  
23 would have liked to have commented on the  
24 Huntington Beach project, but did not at the  
25 earlier time when we took this issue up.

1                   We are still holding until we get to  
2                   some further language. Is there anybody on the  
3                   phone who cares to make a comment? Do we have  
4                   anybody on the phone who has not commented and  
5                   wishes to make another comment on the Huntington  
6                   Beach Project?

7                   We will then, I think, just be on  
8                   standby. The signal I got from our legal counsel  
9                   was one minute, and that one minute has dragged a  
10                  little bit, so I think we'll just hang on here and  
11                  we'll come back to you when we see the documents  
12                  appear and all the parties get a chance to review  
13                  the language.

14                 COMMISSIONER PERNELL: Mr. Chairman, I  
15                 do have a --

16                 CHAIRMAN KEESE: Commissioner Pernell.

17                 COMMISSIONER PERNELL: -- I do have a  
18                 question for our Public Adviser.

19                 The survey that you sent out, did that  
20                 include any questions on our 21-day process,  
21                 peaker plants?

22                 MS. MENDONCA: No. Unfortunately, it  
23                 did not.

24                 COMMISSIONER PERNELL: Okay.

25                 MS. MENDONCA: Sorry.

1 COMMISSIONER PERNELL: Thank you.

2 COMMISSIONER ROSENFELD: Counsel is  
3 approaching.

4 CHAIRMAN KEESE: Counsel is approaching.  
5 We will return to the Huntington Beach item.  
6 We're not going to prejudice you. You take your  
7 time and read this. We're not going to start  
8 until everyone feels comfortable, including those  
9 at the dais here.

10 (Pause.)

11 CHAIRMAN KEESE: Okay, we'll come to  
12 order.

13 A revised version of emergency-2 has  
14 been submitted, and I will just read it so that we  
15 all know we're operating off the same page now.  
16 The last paragraph has an editorial comment, an  
17 editorial change. The last paragraph reads:

18 "If the Commission determines that it cannot  
19 make one or more of the above findings," and  
20 we would strike the words "the project owner  
21 is not in compliance with the above  
22 provisions". So, "If the Commission  
23 determines that it cannot make one or more of  
24 the above findings," and the paragraph then  
25 continues on, in the second-to-the-last line



1           at the end after "action", instead of  
2           "permitted by Public Resources Code," we'll  
3           say, "permitted by law.

4           So we'll actually strike the last line  
5           and insert the word "law".

6           Is everybody clear on what we've got in  
7           front of us now?

8           COMMISSIONER LAURIE: Mr. Chairman,  
9           question.

10          CHAIRMAN KEESE: Commissioner Laurie.

11          COMMISSIONER LAURIE: If the Commission  
12          determines that the project -- okay, give me that  
13          again?

14          CHAIRMAN KEESE: We used the word  
15          "findings" above. We asked the applicant, the  
16          project owner, to support the following Commission  
17          findings, so we switched the word instead of --

18          COMMISSIONER ROSENFELD: -- three  
19          bullets.

20          CHAIRMAN KEESE: So we say, if the  
21          Commission determines that it cannot make one or  
22          more of the above findings --

23          COMMISSIONER ROSENFELD: And if the  
24          applicant --

25          CHAIRMAN KEESE: -- and if the applicant

1 fails, et cetera.

2 COMMISSIONER LAURIE: Why is it one or  
3 more? Why isn't it all? What am I missing?

4 COMMISSIONER ROSENFELD: He's right.

5 COMMISSIONER PERNELL: We can just say  
6 the above findings.

7 COMMISSIONER ROSENFELD: To make all of  
8 the above findings? Bob Laurie's right.

9 CHAIRMAN KEESE: Describe --

10 MR. LARSON: I actually think -- I think  
11 he's right, but I think it probably means the same  
12 thing under the circumstances, but --

13 COMMISSIONER ROSENFELD: Why don't we  
14 just say all?

15 MR. LARSON: -- I have no problem with  
16 all.

17 CHAIRMAN KEESE: Cannot make the above  
18 findings.

19 COMMISSIONER LAURIE: I mean if you want  
20 to change it, it can't be one or more. I was  
21 satisfied with the --

22 CHAIRMAN KEESE: The, cannot make the  
23 above findings.

24 MR. KRAEMER: Well, Mr. Chairman, I hate  
25 to parse sentences in public, but that may

1       literally require that the Commission has to find  
2       that they cannot make each of the three findings.

3               And in the situation where it can find  
4       that they have all the permits, it may not trigger  
5       the red flag. Do you see where I'm going?

6               COMMISSIONER LAURIE: Well, what's the  
7       problem with the current language?

8               CHAIRMAN KEESE: If it has to make the  
9       findings it's all the findings.

10              COMMISSIONER ROSENFELD: Do you want all  
11       of the above findings?

12              MR. KRAEMER: The current language talks  
13       about provisions, whereas up above it talks about  
14       findings. So, you're trying to --

15              COMMISSIONER PERNELL: So that's okay.

16              COMMISSIONER LAURIE: What's wrong with  
17       the original language?

18              MR. KRAEMER: Well, provisions and  
19       findings aren't necessarily the same things.

20              COMMISSIONER BOYD: Change the word.

21              COMMISSIONER PERNELL: Well, we've done  
22       that, we've changed the word from provisions to  
23       findings. Right?

24              MR. KRAEMER: Maybe you could say if the  
25       Commission cannot make each of the above findings,

1 or cannot make all of the above findings, I think  
2 that does it.

3 CHAIRMAN KEESE: There's no difference  
4 if that's what's going to get to buy off staff, is  
5 applicant okay --

6 COMMISSIONER LAURIE: Well, I think  
7 there is a difference, and I think that indicates  
8 the correct intent. That is, it's all three  
9 bullets. And it should be clear that it's all  
10 three bullets, so --

11 CHAIRMAN KEESE: All the above findings.

12 MR. KRAEMER: And I want to work with --

13 COMMISSIONER LAURIE: -- so, all the  
14 above, or --

15 MR. KRAEMER: -- you to make that clear,  
16 yeah.

17 COMMISSIONER LAURIE: -- each of the  
18 above findings.

19 CHAIRMAN KEESE: Okay. With that, I  
20 guess, staff, --

21 MR. ROTHMAN: Did you go with each or  
22 all?

23 CHAIRMAN KEESE: -- staff looks like  
24 they're okay. Is the applicant -- can the  
25 applicant accept this language.

1                   MR. ROTHMAN: I'm trying to figure out  
2                   what language we're now talking about. Is it if  
3                   the Commission determines that it cannot make all  
4                   the above findings?

5                   CHAIRMAN KEESE: The above findings.

6                   MR. ROTHMAN: That's acceptable.

7                   CHAIRMAN KEESE: Thank you. Okay, all  
8                   right. I believe then, in the overall, this is --  
9                   now you approve the language.

10                  MR. ROTHMAN: Well, --

11                  CHAIRMAN KEESE: Now, can you -- I'm not  
12                  sure that you have much of an option here.

13                  MR. ROTHMAN: I understand that.

14                  CHAIRMAN KEESE: Let's -- I'm not asking  
15                  you whether -- I'm asking for your comments on  
16                  this proposal.

17                  MR. ROTHMAN: Thank you. And I think  
18                  our comments are that we agree with the language  
19                  as presented in the Commission's proposal as far  
20                  as it goes.

21                  We note that we just heard a Commission  
22                  approval of a project that actually has greater  
23                  emissions for an unlimited period of time, and  
24                  that the fact that it is a limited period still  
25                  raises in our mind that this condition doesn't go

1 far enough in terms of recognizing at the end of  
2 the ten-year term that this is a permitted,  
3 legally operating facility for the purposes of any  
4 future or subsequent review.

5 And that language that we put in there  
6 isn't existing, and we just wanted to point out  
7 that that was and is an important issue for us.

8 CHAIRMAN KEESE: Okay. Legal counsel,  
9 did you hear that? Would you --

10 COMMISSIONER PERNELL: Well, Mr.  
11 Chairman, before --

12 CHAIRMAN KEESE: I --

13 COMMISSIONER PERNELL: -- we do that --

14 CHAIRMAN KEESE: Commissioner Pernell.

15 COMMISSIONER PERNELL: -- let me just  
16 make a distinction. We're talking about, in this  
17 project it's a retooling. The previous project  
18 was a peaker project. So I just want to get on  
19 the record that we're talking about two different  
20 projects.

21 CHAIRMAN KEESE: Counsel, would you give  
22 your interpretation of what happens as this  
23 project comes to an end?

24 MR. CHAMBERLAIN: Well, I think at the  
25 end of this ten years, the applicant is, of

1 course, able to come to the Commission and seek an  
2 extension of the license, just as any applicant  
3 can seek an extension of a license that has a  
4 limited term.

5 The language that was put into their  
6 proposed condition was ambiguous, in that it said  
7 that at that time the Commission would take into  
8 account the operation of the project.

9 I don't know what that means. I think  
10 what I hear from their comments is that what they  
11 want is that the baseline environmental review  
12 assume that the project continues. And I'm not  
13 sure if that's really the intent of the  
14 Commission.

15 Given that the permit ends in ten years,  
16 it could very well be considered appropriate to  
17 consider not only that as a baseline, but also the  
18 possibility that there would be no project, or  
19 that there would be a different project that they  
20 would bring forward, such as a combined cycle  
21 project. And probably all those things ought to  
22 be considered in the environmental review.

23 CHAIRMAN KEESE: And as I believe you  
24 advised us, that not referring to it essentially  
25 leaves this issue open-ended.

1 MR. CHAMBERLAIN: Right.

2 COMMISSIONER PERNELL: So that there's  
3 nothing that would preclude them from coming to us  
4 for either an extension or a new certification --

5 MR. CHAMBERLAIN: Correct.

6 COMMISSIONER PERNELL: -- after that  
7 period?

8 MR. CHAMBERLAIN: Yes.

9 MR. ROTHMAN: I mean, I don't think --  
10 as I said, I don't think we have a whole lot more  
11 to add. I don't want to belabor the point.

12 CHAIRMAN KEESE: Thank you, we -- thank  
13 you.

14 We have this before us and I think we're  
15 now at the point of noncontroversy on this  
16 portion. Commissioner Laurie asked you a question  
17 earlier, whether you could accept, indicate  
18 acceptance of condition 1.

19 COMMISSIONER LAURIE: In fact, it's all  
20 the conditions to be proposed, Mr. Chairman, to be  
21 imposed.

22 MR. BLACKFORD: Again, I know we're kind  
23 of at the end of the day here. We would feel more  
24 comfortable accepting condition 1 and all the  
25 conditions if we did have some wording in here



1       that basically shows no prejudice at the end of  
2       the ten-year term in any further, you know, moving  
3       forward.

4               COMMISSIONER LAURIE:  Mr. Chairman, I,  
5       for one, have no intent of adding any additional  
6       verbiage.

7               CHAIRMAN KEESE:  You don't have the  
8       support for adding that.  I think you have our  
9       indication of non-prejudice.

10              COMMISSIONER LAURIE:  I think the law is  
11      what the law is.

12              CHAIRMAN KEESE:  We have been advised  
13      that this is open-ended at the end.

14              MR. BLACKFORD:  We accept all conditions  
15      then.

16              CHAIRMAN KEESE:  Thank you.  Counsel, at  
17      this time, before we take a vote on this matter,  
18      we heard from a member of the audience that this  
19      action would be precedential.  Would you comment  
20      on that, the nature of precedent?

21              MR. CHAMBERLAIN:  Yes.  The Government  
22      Code provides that the Commission can make the  
23      decision a precedential decision, but has to do so  
24      by indicating specifically that it is doing so.

25              In the current decision there is no such

1       indication. I simply wanted to make that clear  
2       for the record.

3               CHAIRMAN KEESE: Thank you. Do we have  
4       a motion.

5               COMMISSIONER ROSENFELD: I move  
6       adoption.

7               COMMISSIONER PERNELL: Second, Mr.  
8       Chairman, with all of the --

9               CHAIRMAN KEESE: We have a motion, and I  
10       believe everybody understands what we've -- the  
11       changes that have been made in the application  
12       before us. And we have the new emergency-2.

13               Motion by Commissioner Rosenfeld; second  
14       by Commissioner Pernell. Any further comment?

15               COMMISSIONER LAURIE: I have comment,  
16       Mr. Chairman.

17               CHAIRMAN KEESE: Commissioner Laurie.

18               COMMISSIONER LAURIE: I would defer to  
19       my colleagues on the Committee if they would like  
20       to make a comment at this time. If not, I will  
21       offer mine.

22               Mr. Chairman, in reference to emergency  
23       condition 1 that is the requirement of entering  
24       into the agreement with DWR, as nice as it would  
25       be for California to be able to assure ownership

1 of the electrons produced within her borders, I'm  
2 not satisfied that such is good, long-term, state  
3 policy.

4 On the other hand, I'm not satisfied  
5 that that's what we are doing here. That this is  
6 an extraordinary procedure set in place during  
7 extraordinary circumstances. And under these  
8 extraordinary circumstances, I think the  
9 requirement of entering into an agreement with  
10 DWR, as such terms and conditions may turn out to  
11 be, is very appropriate.

12 I also understand the propriety of  
13 giving the greatest concern and notice of the  
14 needs of the local populace. I believe those  
15 needs have been met to the greatest extent  
16 possible.

17 I'm satisfied that the conditions, as  
18 proposed, under the circumstances, satisfy those  
19 needs to the greatest extent possible.

20 But I'm also satisfied that in speaking  
21 with the Commissioners, that we do not minimize  
22 the importance or the jurisdiction of the local  
23 government to speak on behalf of her people. And  
24 that position is respected to the greatest degree.

25 CHAIRMAN KEESE: Thank you, Commissioner

1 Laurie.

2 COMMISSIONER PERNELL: Mr. Chairman, --

3 CHAIRMAN KEESE: Commissioner Pernell.

4 COMMISSIONER PERNELL: -- I'd just like  
5 to, and I've said this before and I'll say it  
6 again, to thank the City of Huntington Beach for  
7 their hospitality when we were down there, as well  
8 as the applicant, for enduring a very rigorous  
9 process. Sometimes it wasn't as nice as it should  
10 be from some of the residents, but they sat  
11 through it.

12 Also, Garret, who was our Hearing  
13 Officer, was excellent and his interpretation in  
14 trying to move the process forward, we know that  
15 this was an expedited process, so it took some, or  
16 a lot of work up front.

17 Also I want to thank staff. You know,  
18 staff has always been very professional in their  
19 comments. And there's one thing about this  
20 process, they don't always agree with the  
21 Commissioners, as you probably have seen today.

22 So the bottomline is I think that given  
23 the review of Huntington Beach and three years and  
24 the CEC's review, and that it is a ten-year  
25 certification, it's not for the duration of the

1 project.

2 It was something that wasn't taken  
3 lightly by the Committee. We did, for the  
4 commenter on the phone, we did think long and hard  
5 about this. And the burden does matter. I mean  
6 we're not saying that it doesn't. But the fact of  
7 the matter is I think it took a lot of heart to  
8 come to this conclusion. And we didn't do it  
9 lightly.

10 So I just want to thank everyone  
11 involved, including the applicant, AES, as well as  
12 Huntington Beach, our staff, and certainly want to  
13 recognize my Advisor, Ellie Townsend-Smith, in  
14 this effort.

15 So, again, thank you, all.

16 CHAIRMAN KEESE: Thank you, Commissioner  
17 Pernell.

18 At this time we'll take the vote. All  
19 in favor?

20 (Ayes.)

21 CHAIRMAN KEESE: Opposed? Adopted four  
22 to nothing.

23 And I will thank the Committee for their  
24 work, and all of the parties for their  
25 flexibility.

1                   This meeting's adjourned.

2                   (Off the record.)

3                   CHAIRMAN KEESE: I withdraw my  
4                   termination of this meeting.

5                   We are going to go into a brief  
6                   executive session at which time this meeting will  
7                   be adjourned.

8                   (Executive Session.)

9                   (Whereupon, at 12:25 p.m., the business  
10                  meeting was adjourned.)

11                  --o0o--

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2001.

VALORIE PHILLIPS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

□